HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Appl. No.145 of 2006

Date of Decision: 7th March, 2006

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of firs page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Appl. No. 145 of 2006

Dr. Subhash Chandra Mishra
S/o Late Shri Bhola Mishra
R/o IIT, Guwahati, Assam .....Petitioner

Versus

1. State of Uttaranchal

2. Dr. David Alan Blank
S/o Dr. Johan Edward Blank
R/o Fernworth House
Landour, Mussoorie ....Respondents

Sri K.K. Jha, learned counsel for the petitioner
Sri K.S. Rautela, learned A.G.A. for the State

Ho'ble J.C.S. Rawat, J.

The present petition u/s 482 Cr. P.C. has been filed to quash the impugned order dated 11.07.2005 passed by the learned Chief Judicial Magistrate, Camp Mussoorie in complaint case No. 276 of 2004 titled as Dr. David Alan Blank Vs. Dr. S.C. Mishra and to quash the proceedings of the complaint case No. 276 of 2004 as indicated above.

Brief facts for the disposal of this petition are that respondent No. 2 filed a complaint before the Court of C.J.M. Camp, Mussorie, Dehradun alleging therein that the complainant is the Asian Representative for SONEX Research INC and for the last few years he is the resident of Mussoorie. The complainant further alleged that he was acting informally as Primary Ph.D guide of the petitioner. It was further alleged that the complainant published research work titled as 'The 2-D Collapsed Dimension Method for use of 3-D Radiation Calculations in Absorbing Emitting Media' which was submitted in the year 1994 and it was also published in international journal of Numerical Methods in Engineering, Vol. 37 No. 18 pp

3023-3036 in the year 1994. The present petitioner had illicitly and knowingly published a large number of items representing in his Ph.D. thesis and the thesis is titled as 'A' Novel Computational Approach for Solution of Radiative Heat Transfer Problems in Participating Media'. The same work is said to be the original work of the petitioner so published as indicated above. It was further alleged in the complaint that the complainant came to know from the internet careful review of an IIT Kanpur Ph.D. thesis and several international journal publications. It was also alleged that the thesis of the applicant illicitly and knowingly claimed many of the above ideas of the complainant. The petitioner had not taken the consent before publishing the said ideas in his thesis. Thus the complainant prayed for summoning of the accused. It was further alleged that the applicant has committed offence of intellectual property right punishable u/s Section 63 of the Copyright Act. The respondent No. 2 was examined u/s 200 Cr.P.c. in support of his prosecution the complainant examined Kenneth S.Wade as PW-1 who has stated in his evidence before the court below that Mr. Mishra recognized the contribution of Dr. Blank in his 'Acknowledgements' Chapter he immediately goes on to claim credit for Dr. Blank's 'Effective Intensity Approach' that was published a year earlier. Even if the Mishra's concept is new or novel, it is clearly taking advantage of the previously published and defined methodology and name of Dr. Blank's work. The equation which has been taken by the petitioner gives a method which was already published by Dr. Blank-respondent No.2. It was also revealed from the statement that he has taken the equation and method for coming to a conclusion which was already invented by the respondent No. 2. The complainant had also adduced the evidence of Dr. Rajjan Singhal who is Ph.D. in computer science and he has also supported the version of the complainant. After appraisal of the complaint and

the evidence, the learned C.J.M. had summoned the accused under Section 60 and 63 of the Copyright Act.

Feeling aggrieved by the said order, the present petition has been filed.

Heard learned counsel for the parties and perused the record.

At the outset, I would like to mention that there is no penal provision u/s 60 of Copyright Act. Section 63 is only penal provision under copyright Act. It was contended that the respondent No. 2 was the informal Ph.D. Guide when the petitioner was at IIT Kanpur. It was further contended that he left the Kanpur IIT and went to Kharagpur IIT even then the informal guidance was provided to him. He further contended that in the year 1996 there was some dispute and respondent No. 2 started to black-mail the petitioner and on such threatening the relation between the parties became strain. It was further contended that the petitioner has filed certain documents to substantiate his allegations. The perusal of the record reveals that the respondent No. 2 had filed a complaint before the C.J.M. u/s 63 of the Copyright Act. He had given his evidence and the evidence of the witnesses and prima-facie the evidence is believable. The trial court found that there is a prima-facie case to proceed against the accused. While exercising jurisdiction u/s 482 Cr. P.C. the court has to see as to whether there is any prima-facie case is made out against the accused at this stage. The jurisdiction u/s 482 Cr.P.C. is very limited one. The petitioner has taken a case that respondent No. 2 is the informal guide of the petitioner and he wanted to blackmail the petitioner. The respondent No. 2 became zealous as the petitioner was getting appreciation for his research works. The petitioner had further stated that he had not stolen his work and the respondent No. 2 has taken a false case. It is revealed that the work of the complainant/respondent No. 2 was submitted in the year 1994

and the petitioner submitted the same ideas in his thesis in the year 1994. Prima-facie it is establishment at this stage that there is a case u/s 63 of the Copyright Act. The theory which has been taken in this petition is a matter of fact which the petitioner can take during the trial and this fact can only be decided by the trial court during the trial. I do not find any substance in the contention of the learned counsel for the petitioner at this stage. The petitioner may take this plea before the trial court at the time of trial.

Learned counsel for the petitioner further contended that the complaint does not disclose offence of Section 63 of the copyright Act. It was further contended that the respondent No. 2 had adduced the evidence of PW-2 Rajjan Singhal who is not a mechanical engineer. He is only a computer engineer and his evidence cannot be relied upon. It was further contended that the evidence is not believable at this stage. Here, I would like to mention that the publication work was made in the year 1994 by the respondent No. 2 and the thesis of the petitioner was submitted in the year 1997. Thus it is clearly revealed from the averment of the complainant that the thesis of the respondent No. 2 was submitted in the year 1994 prior to the work of petitioner. The research work of the petitioner was submitted in the year 1997. It is the matter to be considered as to whether the equations are the same or not. It was not disputed that there was any dissimilarity among the equation submitted by both the parties. PW-1 has clearly stated in detail that the equations are similar in both the research work of the parties. The evidence of the complainant is also on record which clearly revealed that there was a prima-facie case against the petitioner at this stage. This court has to see as to whether the evidence adduce by the witnesses are believable or not. This fact can only be decided by the trial court at the time of trial.

It was further contended that Chief Judicial Magistrate, Camp Mussoorie has no jurisdiction to try the case because the

thesis was submitted at Kanpur. Kanpur Court Has got the jurisdiction to try the case. There is averment of the respondent No. 2 in the complaint that the complainant came to know about the fact through internet careful review of an IIT Kanpur Ph.D. thesis and several international journal publication meaning thereby this publication was made in the Journal of the international level. If the offence is committed outside India. The offence may be dealt in any of the area within India. The jurisdiction at the initial stage has to be determined according to the averment made in the complaint. The averment made in the complaint as stated above clearly reveals that the court of Dehradun has got the jurisdiction to hear the matter. However, it is made clear that this plea can be raised before the trial court at the time of trial when parties will enter into evidence.

It was further pointed out that the thesis was submitted in the year 1997 and the complaint has been filed in the year 2004. Meaning thereby, the complaint has been filed after the limitation. It is pertinent to mention here that according to the petitioner the thesis is submitted before IIT Kanpur and it is not published. But it is averred in the complaint that the respondent No. 2 had come to know through internet careful review and several publication of the international journal. The complainant later on came to know about this fact. It can not be held at this stage the complaint is time barred. This fact can be considered by the trial court at the time of the trial.

Learned counsel for the petitioner further prayed that the petitioner may be exempted from appearing before the court below on each and every date. It is obvious that the court below will consider that the accused may not be harassed by directing him to appear each and every date. At the same time the accused will also appear before the court when he is directed to be present in the court. Learned counsel for the petitioner is directe to move application before the court below for seeking personal exemption and the trial court after looking

into facts and circumstances of the case will consider the prayer of the petitioner.

Section 60 of the Copyright Act is not a penal provisions. It only provides the remedy to file a suit for violation of the copyright, as such, the cognizance u/s 60 of the Copyright Act is bad in law and is liable to be quashed.

In view of the foregoing discussion, there is a prima-facie case at this stage u/s 63 of the Copyright Act. The petition devoids of merit liable to be dismissed and is dismissed accordingly.

(J.C.S. RAWAT,J.)

7th March, 2006
Shiv